

Surface Transportation Board, DOT

§ 1181.6

the Commission are null and void and must be rescinded. Similarly, if applications contain false or misleading information, they are void *ab initio*.

[53 FR 4852, Feb. 18, 1988, as amended at 56 FR 46735, Sept. 16, 1991]

§ 1181.5 Responsive pleadings.

(a) Protests must be filed within 20 days after the date of publication of an approved transfer application in the *ICC Register*. Protests received prior to the notice will be rejected. Applicants may respond within 20 days after the due date of protests. Petitions for reconsideration of decisions denying applications must be filed within 20 days after the date of service of such decisions.

(b) Protests and petitions for reconsideration must be filed with the Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and be served on appropriate parties.

§ 1181.6 Procedures for changing the name or business form of a motor or water carrier, household goods freight forwarder, or property broker.

(a) *Scope*. These procedures (and not the transfer rules at 49 CFR parts 1181, 1182, 1183 and 1186) apply in the following circumstances:

(1) A change in the form of a business, such as the incorporation of a partnership or sole proprietorship;

(2) A change in the legal name of a corporation or partnership or change in the trade name or assumed name of any entity;

(3) A transfer of operating rights from a deceased or incapacitated spouse to the other spouse;

(4) A reincorporation and merger for the purpose of effecting a name change;

(5) An amalgamation or consolidation of a carrier and a noncarrier into a new carrier having a different name from either of the predecessor entities; and

(6) A change in the State of incorporation accomplished by dissolving the corporation in one State and reincorporating in another State.

(b) *Procedures*. To accomplish these changes, a letter must be sent to the Office of the Secretary, Applications

and Fees Unit, Interstate Commerce Commission, Washington, DC 20423. The envelope should be marked "NAME CHANGE". The applicant must provide:

(1) The docket number(s) and name of the carrier requesting the change;

(2) A copy of the articles of incorporation and the State certificate reflecting the incorporation;

(3) The name(s) of the owner(s) of the stock and the distribution of the shares;

(4) The names of the officers and directors of the corporation; and

(5) A statement that there is no change in the ownership, management, or control of the business. When this procedure is being used to transfer operating rights from a deceased or incapacitated spouse to the other spouse, documentation that the other spouse has the legal right to effect such change must be included with the request. The fee for filing a name change request is in 49 CFR 1002.2(f)(11).

[53 FR 4852, Feb. 18, 1988, as amended at 54 FR 47364, Nov. 14, 1989]

PART 1182—PURCHASE, MERGER, AND CONTROL OF MOTOR PASSENGER CARRIERS AND WATER CARRIERS

Subpart A—Applications

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§ 1182.1

49 CFR Ch. X (10–1–96 Edition)

AUTHORITY: 5 U.S.C. 559, 49 U.S.C. 10321, 11321, 11341, 11343, 11344, and 11345a; 21 U.S.C. 853a.

SOURCE: 54 FR 35343, Aug. 25, 1989, unless otherwise noted.

Subpart A—Applications

§ 1182.1 Applications covered by these rules.

These rules govern applications for authority under 49 U.S.C. 11343–11344 to consolidate, merge, purchase, or lease operating rights and properties of a motor carrier of passengers or a water carrier, or to acquire control of one or more motor carriers of passengers or water carriers through ownership of stock or otherwise.

§ 1182.2 Starting the application process.

There is no application form for these proceedings. Applicants for authority under 49 U.S.C. 11343–11344 to consolidate, merge, purchase, or lease operating rights and properties of a motor carrier of passengers or a water carrier, or to acquire control of one or more motor carriers of passengers or water carriers, through ownership of stock, or otherwise, shall file a pleading containing the information described in 49 CFR 1182.3. See 49 CFR 1002.2(f)(21) for filing fees.

§ 1182.3 Content of applications.

(a) The application must contain the following information:

- (1) Full name, address, and signature of each of the parties to the transaction.
- (2) Copies or descriptions of the pertinent operating authorities of the parties.
- (3) A description of the proposed transaction.
- (4) Identification of any ICC-regulated carriers affiliated with the parties, a brief description of their operations, and a summary of the intercorporate structure of the corporate family from top to bottom.
- (5) If applicants are motor carriers, a jurisdictional statement that the aggregate gross operating revenues from interstate operations conducted by them and their motor carrier affiliates, if any, exceeded \$2 million for a period

of 12 consecutive months, ending not more than six months preceding the date of the parties' agreement covering the transaction. See 49 CFR part 1188.

(6) A statement indicating whether the transaction will or will not significantly affect the quality of the human environment and the conservation of energy resources.

(7) Information to demonstrate that the proposed transaction is consistent with the national transportation policy and the public interest, including particularly:

(i) The effect of the proposed transaction on competition within the involved transportation markets;

(ii) The effect of the proposed transaction on accommodating significant transportation needs; and

(iii) If the proceeding involves a motor passenger or rail carrier, the effect of the proposed transaction on the adequacy of transportation to the public; the effect on the public interest of including, or failing to include, other carriers in the area involved in the proposed transaction (if applicable); the total fixed charges that result from the proposed transaction; and the interest of carrier employees affected by the proposed transaction. See 49 U.S.C. 111344(b)(2).

(8) Certification of the U.S. Department of Transportation safety fitness rating of each motor passenger carrier involved in the transaction, whether that carrier is a party to the transaction or is affiliated with a party to the transaction.

(9) If motor passenger carriers are involved in the transaction, certification by the party acquiring any operating rights through the transaction that it has sufficient insurance coverage under 49 U.S.C. 10927 for the service it intends to provide.

(10) If water carriers are involved in the transaction, information to show that the acquiring party is fit, willing, and able properly to perform the service authorized by the certificate or permit involved and to conform to the applicable statutory and administrative requirements.

(11) If motor passenger carriers are involved in a purchase of assets or merger transaction, certification by the party acquiring any operating

rights through the transaction that it is not domiciled in Mexico nor owned or controlled by persons of that country.

(12) If the transaction involves the transfer of operating authority to an individual who will hold the authority in his or her name that individual must complete the following certification:

I, _____ (Name) _____, certify under penalty of perjury under the laws of the United States, that I have not been convicted, after September 1, 1989, of any Federal or State offense involving the distribution or possession of a controlled substance, or that I have been so convicted, I am not ineligible to receive Federal Benefits, either by court order or operation of law, pursuant to 21 U.S.C. 853a.

(b) The application shall contain applicants' entire case unless:

(1) The Commission finds, on its own motion or that of a party to the proceeding, that additional evidentiary submissions are required to resolve the issues in a particular case; or

(2) The application contains an impediment. (See 49 CFR 1182.12.)

(c) Any statements submitted on behalf of an applicant supporting the transaction shall be verified. Pleadings consisting strictly of legal argument, however, need not be verified.

(d) If an application or supplemental pleading contains false or misleading information, the granted application is void *ab initio*.

[54 FR 35343, Aug. 25, 1989, as amended at 54 FR 48250, Nov. 22, 1989]

§ 1182.4 Directly related applications.

(a) Directly related applications shall be filed along with the proposed acquisition transaction in a single submission. Such applications are those filed under other provisions of title 49, subtitle IV, U.S. Code, "Transportation," that either directly affect or are directly affected by the application filed under 49 U.S.C. 11343-11344. Typically, they include requests to obtain new operating authority, or to modify or convert existing operating authority. Whenever an application is filed under these rules and a directly related application also is filed, each application shall make reference to the other.

(b) Whenever possible, the Commission will decide directly related appli-

cations in a consolidated proceeding. In such cases, the statutory timeframes governing the lead proceeding under 49 U.S.C. 11343-11344 will be applied.

§ 1182.5 Filing the application.

(a) Each application shall be filed with the Commission as provided at 49 CFR 1182.15. In addition, one copy shall be delivered to the Commission's Regional Office for the region in which each party's headquarters is located. Upon written request of a State, one copy shall be delivered, by first-class mail.

(b) In their application, the parties shall certify that they have delivered copies of the application as provided in paragraph (a) of this section.

§ 1182.6 Commission review of the application.

(a) All applications will be reviewed for correctness and completeness. Minor errors will be corrected with notification to the applicants. Incomplete applications may be rejected.

(b) A summary of the application will be published in the *ICC Register* to give notice to the public. The summary for an application involving motor carriers also will be published in the *FEDERAL REGISTER*. It will be published in the form of a tentative grant of authority. (See also 49 CFR 1182.12, regarding applications published with impediments.)

(c) If the published notice does not properly describe the authority sought, applicants shall inform the Commission within 10 days after the publication date.

Subpart B—Protests

§ 1182.7 Protests.

(a) Protests to an application shall be filed (received at the Commission) within 45 days after the date the application is published.

(b) Failure to file a timely protest waives further participation in the proceeding. If no one opposes the application, the published tentative grant of authority will automatically become effective at the close of the comment period.

§ 1182.8 Notice.

A copy of the application will be available for inspection at the Commission's offices in Washington, DC, or at the Regional Office for each applicant's domicile. Interested persons may request a copy of the application by writing to the Commission-designated contract agent (as identified in the *ICC Register*), Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, and including a check or money order for \$10 made payable to such contract agent; or, by contacting the contract agent at (202) 289-4357/4359 [TDD for hearing impaired (202) 275-1721] and arranging billing acceptable to the agent.

§ 1182.9 Contents of a protest.

- (a) Protests shall be verified.
- (b) The protest shall contain all information upon which the protestant plans to rely, including the grounds for the protest and the protestant's interest in the proceeding.
- (c) A protest may include a request that the Commission allow:
 - (1) Additional evidentiary submissions from the parties to a proceeding; or
 - (2) Further procedural steps to develop the evidentiary record (e.g., discovery).

The request must demonstrate that this procedure is necessary to resolve the specific issues giving rise to the request. If the Commission finds, whether on its own motion or that of a party, that the record requires supplementation, a decision will be issued indicating the additional information required and the time frames within such information must be submitted.

§ 1182.10 Filing a protest.

- (a) The protest is to be sent to the Commission with the docket number of the proceeding conspicuously placed on the top of the first page of the protest.
- (b) A copy of the protest shall be served on applicant's representative(s).

§ 1182.11 Withdrawing a protest.

A protestant wishing to withdraw from a proceeding shall concurrently

inform the Commission and the applicants in writing.

Subpart C—General Requirements

§ 1182.12 Amendments.

(a) After notice of an application is published, applicants may not amend their proposal unless specifically required to do so by the Commission because of an "impediment" in the application (e.g., a jurisdictional problem, unresolved fitness issue, or question concerning possible unlawful control). Any such impediment will be indicated in the published notice.

(b) If an impediment is noted, applicants file a pleading suggesting a "cure" to the impediment and/or containing legal argument, within 20 days after the date the notice is published. Applicants must subsequently serve any protestant(s) with a copy of their pleading. Failure to comply with these provisions may result in dismissal of the application.

(c) Protestants wishing to file a reply to the applicants' pleading must do so within 20 days after the date applicants' pleading is filed.

(d) If replies to applicants' pleading are filed, applicants may file a rebuttal within 15 days after the date the replies were due. This optional pleading will be in addition to any evidence previously submitted by applicants in the application or the reply to protests.

§ 1182.13 Replies.

(a) If the application is opposed, applicants may file a reply to the protest(s). This reply statement is due at the Commission within 60 days after the date of publication of the application.

(b) The reply statement may not contain new evidence. It shall only rebut or further explain matters previously raised.

(c) The reply statement shall be verified unless it consists strictly of legal argument. A copy of the reply statement shall be served on protestants.

§ 1182.14 Withdrawing an application.

If applicants wish to withdraw an application, they shall jointly request dismissal in writing as provided at 49 CFR 1182.15.

§ 1182.15 Copies.

An original and one copy of all applications filed under this part and all other pleadings and material relating to such applications must be filed with the Commission in Washington, DC, and, if mailed, addressed to "Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423."

§ 1182.16 Certificate of service.

(a) Where the rules require service of a pleading on another party, that pleading shall be mailed or delivered by hand concurrently with its service on the Commission.

(b) The pleading shall contain a statement (certificate of service) that the pleading has been mailed or hand delivered in accordance with paragraph (a) of this section.

(c) All motions and replies shall be served on all parties.

§ 1182.17 Verification of statements.

(a) All applications and related pleadings (except motions to strike, replies thereto, and other pleadings that consist only of legal argument) must be verified by the person offering the statement.

(b) The manner of verification must be as follows:

I, _____, verify
(name and title of witness)
under penalty of perjury, under the laws of the United States of America, that all information supplied in connection with this application is true and correct. Further, I certify that I am qualified and authorized to file this application or pleading. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

(Signature and Date)

§ 1182.18 Statutory findings.

The following findings are made for applications to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor passenger carriers or water carriers under 49 U.S.C. 11343-11344:

We find, with the exception of those applications involving impediments (*e.g.*, jurisdictional problems, unresolved fitness questions, or questions involving possible unlawful control) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11321, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated. This finding shall not be deemed to exist where the application is opposed. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

PART 1184—MOTOR CARRIER POOLING OPERATIONS

Sec.

1184.1 Scope and purpose.

1184.2 Contents of a pooling application.

1184.3 Processing pooling applications.

AUTHORITY: 49 U.S.C. 10321 and 11322; 5 U.S.C. 559.

SOURCE: 46 FR 21181, Apr. 9, 1981, unless otherwise noted. Redesignated at 47 FR 49595, Nov. 1, 1982.

§ 1184.1 Scope and purpose.

This statement of policy on motor carrier pooling applications implements section 20 of the Motor Carrier Act of 1980 [Pub. L. No. 96-296, 94 Stat. 793]. The Act's provisions are now contained at 49 U.S.C. 11342(b).

§ 1184.2 Contents of a pooling application.

A pooling application filed under 49 U.S.C. 11342(b) should include the following information:

(a) An identification of all the carriers who are parties to the pooling agreement;

(b) A general description of the transaction;

(c) A specific description of the operating authorities sought to be pooled;

(d) The basis to establish that the agreement is a genuine pooling arrangement (as opposed to a lease or interline arrangement);

(e) A description of what applicants consider to be the relevant transportation markets affected by the proposed agreement;

(f) The competitive routing and service alternatives that would remain if